

# Winer Legal Services, LLC

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**Jonathan W. Winer, Esq.**  
Senior Counsel

March 10, 2017

U.S. Army Corps of Engineers  
Attn: Ms. Tina P. Stonemetz  
1100 Graham Road Circle  
Stow, OH 44224

Harold Keppner, Chief of Unauthorized Activities  
Enforcement  
Department of the Army  
Buffalo District, Corps of Engineers  
1776 Niagara Street  
Buffalo, New York 14207-3199

and

Christopher Grubb  
Assistant Regional Counsel  
U.S. EPA Region 5 (C-14J)  
77 W. Jackson Blvd.  
Chicago, IL 60604

**Transmitted by certified mail, and electronically to  
tina.p.stonemetz@usace.army.mil and Grubb.Christopher@epa.gov**

RE: Yuhasz Bros, LLC, Properties in Windsor and Mesopotamia;  
A.C.O.E. Enforcement No. 2016-00999

Dear Chief Keppner, Ms. Stonemetz and Mr. Grubb:

I am writing to follow up on our correspondence and phone conversations regarding Chief Keppner's cease and desist letter of September 27, 2016 affecting use of the above referenced property. For the past several months, my client has been striving to better understand the parameters of the cease and desist order. The cease and desist letter indicates that a determination has been made regarding alleged violations on "jurisdictional wetlands," but offers no insight into the specific locations of any alleged wetlands. We have requested a description of the areas within my client's property which are deemed to be wetlands, and therefor under the jurisdiction of the Army Corps. In response to my inquiries requesting specificity, I have received two pieces of information from the Corps.: 1.) The cease and desist order applies to the entire property, comprising approximately 1000 acres; and 2.) The Corps. will follow the lead of the USEPA regarding delineation of areas deemed to be wetlands. If I have misunderstood your responses, please correct me.

Posing the same questions to USEPA Attorney Christopher Grubb, I was provided with a map showing cross-hatched areas assumed by the agency to be wetlands. It is my understanding that the map was created by the previous property owner, in an aborted effort to obtain EPA approval of the alleged wetlands, for mitigation bank wetlands credit. Due to the size of the property, and the scale of the drawing, it is not especially useful to my client, in determining on-site the actual boundaries of the alleged wetlands. I imagine there must be a more detailed and more useful map available; as I have been informed by Mr. Grubb that the 2009 mitigation bank proposal was ongoing for some time, before it was aborted. If someone could please furnish a more detailed depiction of the areas the government regards as suspected wetlands, we will be able to proceed with a much greater likelihood of success, in our efforts to comply with the regulatory action.

My client is a family-owned farming business which purchased the subject property in 2017 for a price of \$3.7 Million Dollars. The property was purchased for farming. Certain portions of the property were historically wetlands; however, much of the property was historically farmland. My client seeks to plant crops this spring and to conduct farming operations on portions of the property which were historically farmlands, taking reasonable measures to minimize environmental disturbance.

The government asserts that certain portions of the property which have been cleared over the past several years should be classified as wetlands; and that certain drainage system repairs have disturbed wetlands. This appears to be the gist of the enforcement action. Again, if I am misinformed, please correct me.

Beyond the question of enforcement, the immediate concern for my client is planting crops this spring. If not permitted to do so, the negative financial impact will be substantial, and potentially catastrophic. My client will regard enforcement action preventing the legal use of the property to be a taking for which compensation will be sought. Expensive and time-consuming litigation is likely to ensue, if the parties are unable to achieve a resolution which fairly and reasonably addresses the concerns of the agency, and the property owner. Conversely, the legitimate environmental and financial concerns of all parties can be fairly and reasonably addressed if the parties work together in a joint effort, to achieve the following objective: Identify actual wetlands, and permit farming operations in areas which are not wetlands. By working together to identify wetlands, we can prevent adverse environmental and financial consequences.

During the week of April 3-7, representatives of the USEPA and perhaps also the Ohio EPA plan to be on-site, to inspect the property. Representatives of EnviroScience, the property owner's environmental consultant, will be on-site concurrently. During this week, much can be accomplished, to bring about resolution. Large areas of the property are readily identifiable as wetlands. There are likewise large areas readily identifiable as non-wetlands. The third category we might refer to as disputed areas. Testing in these disputed areas must be done, for a useful wetlands delineation. If all parties agree to make good faith efforts to test these areas, I see no reason why we cannot accomplish what I hope is a common objective-- proceeding with spring planting without destroying wetlands.

The attached map shows the approximate areas alleged to be wetlands, based on the 2009 mitigation bank application. These are the cross-hatched areas. The

highlighted portions show areas my client has identified as historically agricultural, and on which he proposes to plant crops this spring. The overlapping areas are the subject of this letter.

We understand that there is an enforcement component which the agencies intend to pursue. We stand ready to respond, and hope to reach a negotiated resolution, when the time is right. In the meantime, there is nothing to be gained by delaying the delineation of the wetlands, and impeding spring planting. I think we can all agree on this point.

I hope to hear your thoughts on these matters, and look forward to working together to resolve the concerns of all parties in a manner which is fair and reasonable.

Sincerely,



Jonathan W. Winer, Esq.

JWW;kao